



***Board of Zoning Appeals Public Hearing
December 14, 2010 —7:00 P.M***

CASE NUMBER:	V-10-019
PROPERTY LOCATION:	700 Block of Millport Pointe, Johns Creek, GA 30097 1st District, 1st Section Land Lot 338
CURRENT ZONING:	CUP Conditional (Community Unit Plan District)
PARCEL SIZE:	0.42 Acres
PROPERTY OWNER:	Nora & Brian Dowd
PROPERTY AGENT:	Dwayne Johnson, Gibbs Landscape

REQUEST

The applicant requests a variance to encroach approximately 50 feet into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback required by the City of Johns Creek to construct various retaining walls, a greenhouse addition, stepping stone and waterfall feature, all contained in the side and rear yard of the property. The proposed improvement project is consisting of 465 square feet of additional impervious surface. The subject property is located in the St. Ives Country Club and a stream is located near the rear property line, along the edge of the golf course. The subject property was originally platted with a state mandated stream buffer requirement of 25 feet from the point of wrested vegetation. Fulton County, and subsequently the City of Johns Creek, has adopted the larger stream buffer standards of a 50-foot undisturbed buffer and an additional 25-foot impervious surface setback. The property is currently developed with a two story single-family dwelling.

ADJACENT ZONING AND LAND USES

The subject property is zoned CUP Conditional (Community Unit Plan District) and is located in southern end of the St. Ives Country Club. The subject property is located interior to the subdivision, and therefore is bounded by CUP Conditional zoned property on three sides and a golf course adjacent to the rear yard. South of said property are the Camden River apartments and the Medlock Corners shopping center, respectively zoned A Conditional (Medium Density Apartment District) and C-1 Conditional (Community Business District). Further east of the subject property is the Chattahoochee River, and to the west is an undeveloped O-I Conditional (Office Institutional District) property adjacent to Medlock Bridge Road.

APPLICABLE CODE REQUIREMENTS

City Code; Chapter 109: Natural Resources & Environmental Protection; Article V: Stream Buffer Protection: Section 109-118: Land Development Requirements.

- (i) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the point of wrested vegetation.

- (ii) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

VARIANCE REQUIREMENTS

Staff is including the specific conditions that must be considered for a variance to be granted in an effort to assist the Board of Zoning Appeals in considering the application and its merits. These considerations include:

- (i) When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.
- (ii) Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

ADDITIONAL STREAM BUFFER CONSIDERATIONS

Stream buffers are the areas of land immediately adjacent to the banks of state waters which facilitate the protection of water quality and aquatic habitat. Buffers also preserve green space, improve aesthetics, reduce stormwater runoff velocities, help control flooding, and keep stream water cool by providing shade. These buffers must remain undisturbed in their natural state during and after construction, however variances can be obtained that allow for encroachment under certain conditions. Stream buffers are regulated on both the state and local levels and each agency has different rules regarding buffer widths. The Georgia Environmental Protection Division (EPD) requires 25 foot buffers on both sides of a stream, measured from the point of wrested vegetation which is usually located at the tops of the banks. The City of Johns Creek requires an undisturbed buffer of 50 feet with an additional 25 feet where all impervious surfaces are prohibited. Variance applications may be granted on a case by case basis provided the applicant submit information showing the location of the stream, the extent of encroachment, and documentation of the unusual hardship should the buffer be maintained. These variance applications must also provide mitigation measures to offset the impacts of land development or disturbance on the proposed property. Although allowed by ordinance, granting of stream buffer variances should be kept to a practicable minimum in order to preserve water quality and minimize flood risks from future, upstream development. The location and extent of buffer encroachment, long term water quality impacts, and potential, less intrusive alternate designs are all factors to be considered in determining whether to issue a variance. Stream Buffer Variances granted by the City of Johns Creek are subject to annual audits by the Metropolitan North Georgia Water Planning District and the EPD. The City must ensure that consistency and thorough examination to long term impacts are considered in order to justify granting variances.

RECOMMENDATION

The subject property was originally platted with a stream buffer of 25 feet from the banks of the stream that is located along the golf course, adjacent to the rear yard. The applicant would like to construct multiple retaining walls for gardening purposes and for greater usability of the rear yard, along with a greenhouse addition, stone path, and a waterfall feature that will total 465 square feet of additional impervious surface. The proposed improvements would require a 50-foot encroachment into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback.

The site plan submitted by the applicant illustrates that under the previous requirement, the proposed improvements could have been developed on the property without encroaching into and maintaining the

original 25-foot stream buffer. With the adoption of the larger stream buffer standards of 50-foot undisturbed buffer and additional 25-foot impervious surface setback by the city, a large portion of the existing residence also encroaches into the stream buffer. The requested encroachment of 50 feet would not result in the removal of mature vegetation from the rear yard, considering that the rear yard is grassed and the larger trees and vegetation are located along the perimeter of the property. In addition, as part of the proposed improvement, the applicant would provide a replanting/landscape plan to mitigate the requested encroachment into the stream buffer that would result in a density increase of plant material. Although, the proposed side and rear yard improvements would encroach into the stream buffer, the improvements would be constructed outside the original 25-foot stream buffer, and also comply with the requirements of the zoning ordinance.

In light of the applicants' landscape and mitigation plan, the subject property having had the ability to implement improvements on the property without a variance based on the previous stream buffer requirement, and the proposed improvements not having an adverse effect on existing vegetation; the Department of Community and Development recommends **APPROVAL with conditions** of this request.

Based upon the findings and conclusions herein, Staff recommends **APPROVAL with conditions** of this request, subject to the following conditions of approval or as may be amended by the Board of Zoning Appeals:

- 1) The proposed improvements, which includes a retaining wall in the rear, multiple retaining walls in the side yard, greenhouse addition, stone path, and waterfall feature shall encroach no more than 50 feet in depth into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, as shown on the site plan dated November 12, 2010.
- 2) The proposed improvements shall not exceed 465 square feet of additional impervious surface.
- 3) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of proposed improvements.
- 4) As part of the building permit, the applicant is to submit a copy of the mitigation plan that was provided with the variance application dated November 24, 2010. The mitigation plan must clearly depict the location, number, and plant material to be installed on the property.
- 5) The applicant is required, prior to issuance of a certificate of completion, to replant vegetation on the subject property, in order to offset any adverse impact associated with additional impervious surface closer to the stream. Replanting of vegetation shall be consistent with the mitigation plan submitted by the applicant to the Department of Community and Development on November 24, 2010.

Aerial and Vicinity Map

